

APPEAL NO. 041096
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 14, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from June 10, 2003, through the date of the CCH. The appellant (carrier) appeals, contending that the hearing officer's determinations on the disputed issues of compensable injury and disability are not supported by legally or factually sufficient evidence, and that the hearing officer erred in allowing the treating doctor to testify. The claimant asserts that sufficient evidence supports the hearing officer's decision and that the hearing officer did not err in allowing the treating doctor to testify.

DECISION

Affirmed.

The hearing officer did not err in allowing the treating doctor to testify. It is undisputed that the claimant timely exchanged the identity of the treating doctor as a witness known to have knowledge of relevant facts under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)). The carrier objected to any testimony from the treating doctor regarding treatment he provided to the claimant after July 31, 2003, because, based on an untimely exchange objection by the carrier, the hearing officer had excluded from evidence work status reports issued by a doctor the treating doctor is associated with. The hearing officer overruled the carrier's objection to the testimony of the treating doctor. The carrier then offered into evidence the treatment notes of the treating doctor, which were admitted into evidence, and the claimant reoffered the previously excluded work status reports, which were admitted into evidence without objection by the carrier. We perceive no error in the hearing officer's ruling allowing the treating doctor to testify.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations in favor of the claimant on the appealed issues of compensable injury and disability are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge